

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

RONALD WASTEWATER DISTRICT, et al.,

Petitioners,

and

KING COUNTY,

Intervenor,

v.

SNOHOMISH COUNTY,

Respondent,

and

OLYMPIC VIEW WATER AND SEWER
DISTRICT AND TOWN OF WOODWAY,

Intervenor.

Case No. 16-3-0004c

FINAL DECISION AND ORDER

SYNOPSIS

Petitioners challenged Snohomish County Amended Motion No. 16-135 approving Olympic View Water and Sewer District's Sewer Plan June 2015 Amendment No. 2, expanding its service planning area to include Point Wells, as a de facto amendment to Snohomish County's Comprehensive Plan which violated GMA requirements for public participation, consistency, and [not more than] annual Plan updates. The Board concluded the County's action was a de facto amendment of its Plan and inconsistent with the 2015 Capital Facilities Plan, which incorporated Ronald Wastewater District's Comprehensive

1 *Sewer Plan and relied on Ronald as the service provider for Point Wells to meet GMA*
2 *requirements for sewer facility adequacy. The action was remanded to the County for*
3 *compliance action.*

4 5 **I. INTRODUCTION**

6 Petitioners City of Shoreline (Shoreline) and Ronald Wastewater District (Ronald)
7 challenged Snohomish County Amended Motion No. 16-135 approving the June 2016
8 Sewer Plan Amendment No. 2 for Olympic View Water and Sewer District (Olympic View).
9 King County intervened on the side of Petitioners. The Town of Woodway (Woodway) and
10 Olympic View intervened on the side of Respondent Snohomish County.
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12 Procedural matters are detailed in Appendix A.
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14 **II. BURDEN OF PROOF AND STANDARD OF REVIEW**

15 Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations,
16 and amendments to them, are presumed valid upon adoption. This presumption creates a
17 high threshold for challengers as the burden is on the petitioners to demonstrate that any
18 action taken by the County is not in compliance with the GMA.
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20 The Board is charged with adjudicating GMA compliance and, when necessary,
21 invalidating noncompliant plans and development regulations.¹ The scope of the Board's
22 review is limited to determining whether a County has achieved compliance with the GMA
23 only with respect to those issues presented in a timely petition for review.² The GMA directs
24 that the Board, after full consideration of the petition, shall determine whether there is
25 compliance with the requirements of the GMA. The Board shall find compliance unless it
26 determines that the County's action is clearly erroneous in view of the entire record before
27 the Board and in light of the goals and requirements of the GMA. RCW 36.70A.320(3). In
28 order to find the County's action clearly erroneous, the Board must be "left with the firm and
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¹ RCW 36.70A.280; RCW 36.70A.302.

32 ² RCW 36.70A.290(1).

1 definite conviction that a mistake has been made.” *Dep’t of Ecology v. PUD 1*, 121 Wn.2d
2 179, 201 (1993).

3 4 III. BACKGROUND

5 This case is the latest in a series of cases involving Point Wells,³ an unincorporated
6 area of Snohomish County comprising 106 acres⁴ located immediately North of the
7 King/Snohomish County boundary. Point Wells is bordered to the south and west by Puget
8 Sound shoreline. The upland side is bordered by a steep bluff and Woodway, in Snohomish
9 County, is located at the top of the bluff. The City of Shoreline (Shoreline) is across the King
10 County boundary to the south.⁵ Due to the topography, vehicular access to Point Wells is
11 via Shoreline. A railroad line bisects the sit running north and south. Historically, Point Wells
12 was the site of petroleum-based industrial use, including an oil refinery, tank farm, and
13 asphalt plant. More recently, Snohomish County, adjacent jurisdictions and property owners
14 have been exploring urban development of the area, which boasts 180-degree views of
15 Puget Sound.⁶ A developer, BSRE Point Wells, LLP (BSRE), proposes a mixed-use urban
16 center with more than 3000 residential units.⁷

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19 The unique topography of the area presents both opportunity and problems: The
20 sloping site’s panoramic view creates redevelopment potential in Snohomish County, but in
21 a situation in which road and service access comes through King County and Shoreline.
22 Simplistically stated, the problem has been that the benefit may accrue in one county and
23 the burden in another. The multiplicity of petitions to the Board over the last two decades
24 are indicative of ongoing maneuvering to resolve a dispute between Shoreline, in King
25 County, and Woodway, in Snohomish County, regarding which municipality should
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28 ³ See, e.g. *City of Shoreline, et al v. Snohomish County*, GMHB No. 09-3-0013c; *City of Shoreline, et al v.*
29 *Snohomish County*, GMHB No. 10-3-0001c; *City of Shoreline, et al v. Town of Woodway, et al*, GMHB No. 01-
30 3-0013; *BSRE Point Wells v. City of Shoreline*, GMHB No. 11-3-0007.

31 ⁴ County’s Response Brief at 2.

32 ⁵ See *City of Shoreline, et al v. Snohomish County*, GMHB 09-3-0013c (Corrected Final Decision and Order,
May 17, 2011) at 8-9.

⁶ *Id.*

⁷ County’s Response Brief at 2.

1 ultimately annex the area, provide transportation access, and provide urban services to
2 Point Wells.⁸

3 Historically, King County provided sewage and wastewater collection to a petroleum
4 plant on the Point Wells property.⁹ The Ronald Wastewater District was formed in July 1951
5 under the name of Ronald Sewer District.¹⁰ METRO (then a separate regional entity)
6 provided transmission, treatment and disposal services by agreements with then King
7 County Sewerage District 3 (KCSD3) and Ronald Wastewater District¹¹ (Ronald).¹² The
8 KCSD3 area includes the northwest portion of unincorporated King County and the Point
9 Wells Chevron facilities area of unincorporated Snohomish County. Portions of the KCSD3
10 system were built in 1939 and 1940. A sub-district was added in 1965.¹³ The parties do not
11 dispute that King County is the statutory successor to METRO.¹⁴

12
13 In 1981, the Legislature passed Substitute House Bill 352,¹⁵ establishing the principle
14 that the first in time is the first in right where districts overlap.

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16 In 1984, King County began a process to divest itself of direct residential sanitary
17 sewage collection and so transferred KCSD3 to Ronald in 1986.¹⁶ Included was KCSD3's
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20 ⁸ See *City of Shoreline, et al v. Town of Woodway, et al*, GMHB No. 01-3-0013 (Final Decision and Order,
21 November 28, 2001) at 9-10.

22 ⁹ The plant was operated by the Standard Oil Company, which later became Chevron USA. Ronald's Brief at
23 3.

24 ¹⁰ In 1992, the name was changed to Shoreline Wastewater Management District and later, in 2001, to the
25 Ronald Wastewater District. Exhibit 19-20(1), Ronald 2010 CSP, p. 1-4.

26 ¹¹ Then called Ronald Sewer District. Ronald's Brief at 3.

27 ¹² King County's Brief at 2-3.

28 ¹³ Index Ex. 19-20(1), Ronald 2010 CSP, p. 1-5.

29 ¹⁴ RCW Ch. 35.58 allows counties to assume the functions of a metropolitan municipal corporation and to act
30 in a regional capacity to maintain, operate and regulate metropolitan facilities for water pollution abatement,
31 including sewage disposal. See, RCW 35.58.200; 35.58.020(12). King County assumed those functions from
32 METRO in 1994.

¹⁵ Substitute House Bill No. 352, Laws of Washington, 1981, Chapter 45, SEWER AND WATER DISTRICTS-
SERVICE AND BONDING AUTHORITY, p. 211. SHB 352 reads in pertinent part:

NEW SECTION. Section 1. It is the purpose of this act to reduce the duplication of service and the
conflict among jurisdictions by establishing the principle that the first in time is the first in right where
districts overlap"

¹⁶ Index Ex. 19-20(1), Ronald 2010 CSP, p. 1-5.

1 Richmond Beach Sewer System, which served Point Wells and a small area in the SW
2 corner of Woodway.¹⁷

3 Consistent with RCW 36.94.420, the King County Superior Court issued an order
4 (1985 Transfer Order), effective in 1986, approving the transfer.¹⁸ The 1985 Transfer Order
5 provided that “the area served by the System *shall be annexed to and become a part of the*
6 *District* on the effective date of the transfer.”¹⁹ King County asserts that, in reliance on these
7 agreements and the Transfer Order, METRO and KCSD3 subsequently invested in the
8 Richmond Beach Treatment plant (replaced by the Richmond Beach Pump station in 1988
9 at a cost of \$40 Million to serve the City of Edmonds), the Hidden Lake Pump Station (\$36
10 million in 2009), and public access improvements for a park at Richmond Beach Pump
11 Station (as part of the Brightwater outfall construction).²⁰

12 In 1991, Ronald entered into an agreement with Woodway to transport some of
13 Woodway’s sewage through Ronald’s lines to King County facilities for pumping to the City
14 of Edmonds treatment facility.²¹

15 In 1994, Snohomish County Ordinance No. 94-030 granted a utility franchise to
16 Shoreline Wastewater Management District (now Ronald Wastewater District).²² The
17 franchise agreement authorizes the use of rights-of-way of certain county roads for the
18 purposes of constructing, installing, and maintaining a sanitary sewer system.²³

19 17 King County’s Brief at 3-4.

20 18 RCW 36.94.420 reads in pertinent part:

21 **RCW 36.94.420 Transfer of system from county to water-sewer district—Annexation—**
22 **Hearing—Public notice—Operation of system.**

23 If so provided in the transfer agreement, the area served by the system shall, upon completion
24 of the transfer, be deemed annexed to and become a part of the water-sewer district acquiring
25 the system. ...

26 19 Index Ex. 19.10 (Italics added); King County’s Brief at 3-4.

27 20 King County’s Brief at 4-5; Index Ex. 17, King Co. Wastewater Treatment Division comment letter to Council
28 Chair Ryan.

29 21 Index Ex. 19-20(1), Ronald 2010 CSP, p. 1-6.

30 22 Index Ex. 19-23, Ordinance 94-030.

31 23 Index Ex. 19-20(1), Ronald 2010 CSP, p. 1-7.

1 In 1995, the City of Shoreline was incorporated and assumed responsibility for land
2 use planning from King County for most of Ronald's service area.²⁴

3 In 1996, the Legislature passed SSB 6091,²⁵ which provided in pertinent part:

4 NEW SECTION. Sec. 302. Except upon approval of both districts by
5 resolution, *a district may not provide a service within an area in which that*
6 *service is available from another district or within an area in which that service*
7 *is planned to be made available under an effective comprehensive plan of*
8 *another district.*

9 In 2007, Snohomish County issued a legal opinion confirming that Ronald's corporate
10 boundary includes Point Wells²⁶ and approved a Comprehensive Sewer Plan for Ronald
11 that included Point Wells in Motion 07-550.²⁷ Snohomish County also approved Olympic
12 View's 2007 Comprehensive Sewer Plan (Olympic's 2007 CSP) via Motion 07-550, which
13 was subsequently amended for the first time in September 2009 via Motion 09-385.²⁸
14 Neither Olympic's 2007 CSP, nor its 2009 amendment, identified the Point Wells area as a
15 planned area for sewer service by Olympic View. Instead, Olympic View identified Ronald
16 as the service provider in the area.²⁹

17 In 2009, Snohomish County approved a zoning change requested by BSRE to allow
18 redevelopment at Point Wells³⁰ which was challenged before the Board. In 2011, the Board
19 reversed and remanded the action in part because the County had not yet (in 2009) secured
20 a specific commitment for sewer from any provider.³¹ While the challenge was pending, the
21 Snohomish County Council approved the Ronald Wastewater District's 2010
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26 ²⁴ Index Ex. 19-20(1), Ronald 2010 CSP, p. 1-6.

27 ²⁵ Substitute Senate Bill 6091, Laws of 1996, Chapter 230, Section 302.

28 ²⁶ King County's Brief at 4; Exhibit 19.16.

29 ²⁷ Index Ex. 19.14; Shoreline's Brief at 4.

30 ²⁸ See, Ex. A to Petition for Review, Whereas Clause 1 and 2.

31 ²⁹ Index Ex. 19.14, Fig. 1.3; Shoreline Brief at 3.

32 ³⁰ *Shoreline III and Shoreline IV*, GMHB Coordinated Cases 09-3-0013c and 10-3-0011c (Final Decision and Order, April 25, 2011) at 3.

³¹ *Id.* at 43-44:

"The water and sewer districts now serving the industrial uses on the property have not adopted plans for the infrastructure necessary to support a residential population of perhaps over 6000."

1 Comprehensive Sewer Plan (2010 CSP) via Motion 10-185 in April 2010,³² identifying
2 Ronald as the sewer provider to the Point Wells area.³³

3 In 2012, Snohomish County issued a 2012 SEPA Addendum in response to the
4 Board's 2011 remand that identified Ronald as the sewer service provider for the BSRE's
5 Urban Center Development.³⁴ The 2015 Final EIS and the 2015 Comprehensive plan again
6 identified Ronald as the sewer provider.³⁵

7
8 On June 1, 2016, the Snohomish County Council adopted Motion 16-135, approving
9 a Second Amendment to the 2007 CSP of the Olympic View Water and Sewer District
10 (OVWSD Amendment), adding an Appendix H to the existing 2007 CSP to address sewer
11 system improvements within the Point Wells area.³⁶

12 13 Municipal Maneuvering

14 In 1998, Shoreline identified Point Wells in its comprehensive plan as a potential
15 annexation area (PAA).³⁷ Three years later, Woodway amended its comprehensive plan to
16 also identify Point Wells as a potential annexation area and Shoreline challenged
17 Woodway's action before the Growth Board.³⁸ Both cities acknowledged that the
18 overlapping PAA plans were inconsistent, each arguing that they had expressed their
19 interest in annexation first. Snohomish County intervened, arguing that the two plans were
20 not inconsistent because neither plan thwarted the other.³⁹ The Point Wells landowner,
21 Chevron USA, intervened on the side of Shoreline, complaining that Woodway did not post
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26 ³² Index Ex. 12, Ex. 1; Shoreline's Brief at 3.

27 ³³ Index Ex. 12, Ex. 1; The final *Whereas* in this Motion states that the CSP is consistent with the County's
28 comprehensive plan and with the docketed action for Point Wells. Shoreline Brief at 3; Ronald's 2010 CSP
29 includes plans to serve Point Wells. Index No. 13; Shoreline Brief at 3-4.

30 ³⁴ Index Ex.19.21 at 1, 7, 78-81; Ronald's Brief at 8-9.

31 ³⁵ Index Ex.19.20 at 14 (Figure 3.2-16); Ronald's Brief at 9.

32 ³⁶ Index Ex. 8; Shoreline's Brief at 3.

³⁷ See *City of Shoreline, et al v. Town of Woodway, et al*, GMHB No. 01-3-0013 (Final Decision and Order,
November 28, 2001).

³⁸ *Id.*

³⁹ *Id.*

1 any notices at Point Wells or notify Chevron, the landowner.⁴⁰ The Growth Board rejected
2 Snohomish County's argument and concluded that Woodway's plan was inconsistent with
3 that of Shoreline; but, having found Woodway's plan amendment noncompliant, the Board
4 declined to resolve Chevron's notice issue.⁴¹ Snohomish and Woodway appealed to
5 Snohomish County Superior Court, which reversed the Board and declined to grant relief to
6 Chevron. Shoreline appealed to the Court of Appeals, which found "no reason in logic why
7 land that could *potentially* be annexed by Shoreline cannot also be *potentially* annexed by
8 Woodway."⁴²
9

10 Thus, although GMA does not allow two cities to have concurrent jurisdiction over the
11 same territory, Division I appellate case law holds that two cities *simultaneously planning for*
12 *the possibility* of annexing the same territory does not violate GMA.⁴³
13

14 Meanwhile in 2002, Ronald entered into an interlocal operating agreement (2002
15 Operating Agreement) with the City of Shoreline that set forth terms for Shoreline's future
16 assumption of Ronald. Shoreline planned to assume jurisdiction over Ronald by October
17 2017⁴⁴ under RCW 35.13A.030.⁴⁵ Under RCW 35.13A.020, a city assuming a wastewater
18 district may assume all property, rights, assets and taxes levied but not collected and,
19 pursuant to RCW 35.13A.050, may also assume responsibility to serve the territory of the
20 district outside the city's boundaries.⁴⁶ If Shoreline elects to assume ownership and
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23 ⁴⁰ *Id.*

24 ⁴¹ *Id.*

25 ⁴² *Chevron U.S.A. Inc. v. Hearings Bd.*, 123 Wn. App. 161, 163, 168, 93 P.3d 880 (Div. 1, June 1, 2004);
26 Ronald's Brief at 7.

27 ⁴³ *Id.*

28 ⁴⁴ Ronald's Brief at 5-6.

29 ⁴⁵ RCW 35.13A.030 reads in pertinent part:

30 Whenever a portion of a district equal to at least sixty percent of the area or sixty percent of the
31 assessed valuation of the real property lying within such district, is included within the corporate
32 boundaries of a city, the city may assume by ordinance the full and complete management and
control of that portion of the entire district not included within another city, whereupon the provisions
of RCW [35.13A.020](#) shall be operative; or the city may proceed directly under the provisions of RCW
[35.13A.050](#).

⁴⁶ RCW 35.13A.050 provides that, upon assumption of a wastewater district, the assuming city "shall for the
economically useful life of any [facilities designed to serve territory of the former district lying outside the city]

1 operation of facilities that currently serve Point Wells, RCW 35.13A.050 requires that
2 Shoreline make available sufficient capacity to continue serving the Point Wells territory.⁴⁷

3 However, former RCW 56.08.065, repealed and replaced by Title 57 RCW in 1996,
4 required approval for a wastewater district's provision of sewer service beyond the district's
5 boundaries to be subject to review by the boundary review board.⁴⁸ To that end, Shoreline
6 petitioned the Snohomish County Boundary Review Board (Snohomish BRB) in 2014 and
7 Snohomish County, Woodway, and Olympic View, which provides wastewater service to
8 portions of Woodway, appeared before the Snohomish BRB in objection to Shoreline's
9 service boundary request.⁴⁹ The Snohomish BRB denied the expansion.⁵⁰ The parties
10 disagree as to whether the denial is final.⁵¹ Olympic View points to the Superior Court's
11 dismissal of Shoreline/Ronald's appeal of the BRB decision pursuant to CR 41, wherein
12 Shoreline/Ronald jointly stipulated to dismissal, as barring future appeal of the 2014 BRB
13 decision. At the Hearing on the Merits, Shoreline explained that Shoreline and Ronald
14 chose not to pursue the appeal because it is possible to reapply to the BRB after a year.
15 Clarification of the service area conflict is the subject of a Declaratory Judgment action filed
16 by Ronald in Superior Court and is not within the jurisdiction of the Board.
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20 IV. BOARD JURISDICTION

21 The Board finds the Petition for Review was timely filed, pursuant to RCW
22 36.70A.290(2). The Board finds the Petitioner has standing to appear before the Board,
23 pursuant to RCW 36.70A.280(2)(a) and (b).
24

25 The Boards were created by the Legislature to determine, when there is a challenge,
26 whether plans and regulations adopted by cities and counties comply with the Growth
27

28 make available sufficient capacity therein to serve the sewage or water requirements of such territory, ... at a
29 rate charged to the municipality being served which is reasonable to all parties."

30 ⁴⁷ *Id.*

31 ⁴⁸ County's Response Brief at 7-9.

32 ⁴⁹ Index Ex. 39, Transcript.

⁵⁰ Index Ex. 40, attachment to Superior Court appeal.

⁵¹ Olympic View's and Woodway's Brief at 7.

1 Management Act as applied to comprehensive planning. The Growth Management Act at
2 RCW 36.70A.280 carefully defines the matters subject to the Board's review:

- 3 (1) The growth management hearings board shall hear and determine *only*
4 those petitions alleging ... (a) that ... a state agency, county or city
5 planning under [Title 36.70A] is not in compliance with the requirements of
6 [the GMA], [the SMA] as it relates to the adoption of shoreline master
7 programs or amendments thereto, or [the SEPA]...⁵²

8 Title 36.94 and Title 57 RCW

9 Chapter 36.94 and Chapter 57 RCW govern wastewater. The parties' briefs and
10 arguments at the Hearing on the Merits include considerable discussion of Chapter 57
11 RCW. Because the Board's review is limited to determining consistency with GMA plans
12 and regulations, it does not have jurisdiction to decide the Title 57 issue; but, the Board
13 notes that the importance of the GMA's coordinated planning mandate is acknowledged in
14 the related statute, which requires conformity with the comprehensive plan.⁵³

15 De Facto Amendment

16 The Growth Management Hearings Board was established by the legislature and its
17 jurisdiction is limited as established in statute. The courts have explained: "GMHBs have
18 limited jurisdiction to decide only petitions challenging comprehensive plans, development
19 regulations, or permanent amendments to comprehensive plans or development
20 regulations."⁵⁴ Thus, "unless a petition alleges that a comprehensive plan or a development
21 regulation or amendments to either are not in compliance with the requirements of the GMA,
22 [the Board] does not have jurisdiction to hear the petition."⁵⁵

23 On its face, Amended Motion 16-135 does not purport to amend the Snohomish
24 County comprehensive plan or development regulations. However, in *Alexanderson v. Clark*
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28 ⁵² Emphasis added.

29 ⁵³ RCW 57.16.040(3) reads in pertinent part:

30 ... In approving or not approving the proposed action, the county legislative authority shall consider
31 the following criteria:

- 32 (a) Whether the proposed action in the area under consideration is in compliance with the
development program that is outlined in the county comprehensive plan, or city or town
comprehensive plan where appropriate, and its supporting documents.

1 County,⁵⁶ the court held that actions taken by local governments that do not explicitly
2 purport to amend comprehensive plans or development regulations but that, “in effect,
3 supersede and amend the comprehensive plan” are *de facto* amendments that do fall within
4 the Board’s GMA jurisdiction.⁵⁷

5 Alexanderson et al. contend that the MOU is a de facto amendment to the
6 County's comprehensive plan because it requires the County to act
7 inconsistently with planning policies by providing water to the subject land.
8 Because the MOU has the effect of amending the comprehensive plan, they
9 argue that the Board had jurisdiction to hear its petition. We agree.⁵⁸

10 In *Alexanderson*,⁵⁹ Clark County had entered into an agreement (the MOU) with the
11 Cowlitz Indian Tribe. The appellate court found that in the MOU, the county agreed to
12 provide water to the subject land. In the comprehensive plan, the county agreed not to
13 provide water at a level inconsistent with the comprehensive plan. The Tribe proposed to
14 use the land in a manner inconsistent with the current land use designation of the subject
15 land. The Court of Appeals held:

16 Because the MOU has the legal effect of amending the plan, just as if the
17 words of the plan itself have been changed to mirror the MOU, the MOU
18 was a *de facto* amendment and the Board has jurisdiction.⁶⁰
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23 ⁵⁴ *Woods v. Kittitas County*, 162 Wn.2d 597, 609, 174 P.3d 25 (2007).

24 ⁵⁵ *Wenatchee Sportsmen Assoc. v. Chelan County*, 41 Wn.2d 169, 178, 4 P.3d 123 (2000); *BD Lawson*
25 *Partners, LP v. Black Diamond*, Order of Dismissal, GMHB No. 14-3-0007 (August 18, 2014) at 6-7 (“Board
26 has consistently rejected challenges to city or county resolutions or ordinances that do not enact plans or
27 regulations but simply constitute part of the decision process”).

28 ⁵⁶ *Alexanderson v. Board of Clark County Commissioners*, 135 Wn. App. 541, 549-50, 144 P.3d 1219 (Div. 2
29 2006).

30 ⁵⁷ See also *Your Snoqualmie Valley v. City of Snoqualmie*, Order on Motions, GMHB No. 11-3-0012 (March 8,
31 2012) at 12-13 (pre-annexation agreement in direct contradiction of city comprehensive plan policies was a *de*
32 *facto* amendment).

⁵⁸ *Alexanderson v. Board of Clark County Commissioners*, 135 Wn. App. 541, 549-50, 144 P.3d 1219 (Div. 2
2006).

⁵⁹ *Alexanderson v. Bd. of Comm'rs*, 135 Wn. App. 541, 144 P.3d 1219, 2006 Wash. App. LEXIS 2285 (Wash.
Ct. App. 2006).

⁶⁰ *Id.* at 550. (Emphasis added).

1 Later, in *Alexanderson, et al. v. City of La Center*,⁶¹ the Board explained the
2 necessity of an additional step in determining its jurisdiction if, as here, a challenged action
3 is alleged to override provisions of a comprehensive plan.

4 Thus Issue One, which asks whether Amended Motion No. 16-135 *a de facto*
5 amendment to the Snohomish County Comprehensive Plan, and Issue Two, which asks
6 whether Amended Motion 16-135 is inconsistent with its Comprehensive Plan, are threshold
7 decisions pertaining to the Board's jurisdiction over Petitioners' challenge.
8

9 As discussed below, **the Board concludes** that, under RCW 36.70A.280(1),
10 Amended Motion 16-135 is a *de facto* amendment such that the Board has jurisdiction over
11 the subject matter of the petitions in this consolidated case.
12

13 V. ANALYSIS AND DISCUSSION

14 **Issue One: Is Amended Motion No. 16-135 a de facto amendment to the Snohomish**
15 **County Comprehensive Plan because it approves an amendment to the Olympic View**
16 **Water & Sewer District Comprehensive Sewer Plan (previously approved by Motion**
17 **No. 07-550 and Motion 09-385), which has been incorporated into the Snohomish**
18 **County Comprehensive Plan and relied upon by Snohomish County to fulfill its GMA-**
19 **mandated planning for capital facilities and utilities?**

20 Applicable Law

21 Managing growth in the Central Puget Sound region is governed exclusively under
22 Chapter 36.70A RCW.⁶² The legislative findings in RCW 36.70A.010 include a statement
23 stressing the need for coordinated, planned growth.
24

25 **RCW 36.70A.020** sets forth the GMA planning goals that guide the development of
26 comprehensive plans and reads, in pertinent part:

27 (12) Public facilities and services. Ensure that those public facilities and
28 services necessary to support development shall be adequate to serve the
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30 ⁶¹ *Alexanderson, et al. v. City of La Center*, GMHB No. 12-2-0004 (Order on Dispositive Motions, May 4, 2012)
31 at 11.

32 ⁶² See, *West Seattle Defense Fund v. City of Seattle (WSDF IV)*, GMHB No. 96-3-0033 (Final Decision and
Order, March 24, 1997) at 11.

development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

RCW 36.70A.070 establishes the required elements of comprehensive plans.

Required elements include a capital facilities plan⁶³ and a utilities element:⁶⁴

Each comprehensive plan shall include a plan, scheme, or design for each of the following:

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities ...

(4) A utilities element consisting of the general location, proposed location, and capacity of all existing and proposed utilities, ...

Related law: Under RCW 57.16.010, a wastewater district must adopt a general comprehensive plan for the type or types of facilities the district proposes to provide before ordering any improvements or submitting to vote any proposition for incurring any indebtedness.⁶⁵ A wastewater district's Comprehensive Sewer Plan (CSP) is a long-term plan for its provision of a sewer system suitable and adequate for present and reasonably foreseeable future needs of the sewer district.⁶⁶

Positions of the Parties

Shoreline asserts that an amendment to a sewer plan relied upon in the County's Comprehensive Plan is an amendment to the Comprehensive Plan. In response, Snohomish advances the theory that Olympic View's CSP *as amended by the challenged*

⁶³ RCW 36.70A.070(3).

⁶⁴ RCW 36.70A.070(4).

⁶⁵ "Before ordering any improvements or submitting to vote any proposition for incurring any indebtedness, the district commissioners shall adopt a general comprehensive plan for the type or types of facilities the district proposes to provide." RCW 57.16.010.

⁶⁶ RCW 57.16.010(2); Shoreline's Brief at 3.

1 action is not being relied upon or incorporated by the County for purposes of GMA
2 compliance yet and thus cannot be considered a “*de facto*” amendment.⁶⁷

3 Both parties cite to the Board’s decision in *Fallgatter V*,⁶⁸ in which the City of Sultan’s
4 adoption of a General Sewer and Water Plan was not concurrent with a comprehensive plan
5 amendment and used population targets that differed from the targets adopted in its
6 Comprehensive plan. The City argued that the Sewer Plan was adopted under other
7 statutes and thus did not require the use of GMA population targets,⁶⁹ and that external
8 functional plans, such as the sewer plan and transportation improvement plan, were merely
9 “management” documents rather than GMA planning activities.⁷⁰ Noting that a central
10 concept of the Growth Management Act was coordinating urban growth with the availability
11 of urban infrastructure, the Board found that the Sewer Plan “did not comply with the RCW
12 36.70A.120 mandate to make its sewer planning decisions in conformity with its
13 comprehensive plan.”⁷¹

14
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16 Snohomish County concurs that Sultan’s Sewer Plan was found non-compliant
17 because the City (1) was relying on the Sewer Plan to meet GMA requirements, and (2) the
18 Sewer Plan was based on different population targets than the City’s comprehensive plan
19 and thus inconsistent.⁷² It then asserts that the Olympic View CSP amendment is not
20 inconsistent with its currently effective (2015) Comprehensive Plan because it has not
21 incorporated the amended CSP into the Comp Plan, citing *Ludwig*⁷³ for the proposition that
22 “it is only when a City or County adopts a sewer district’s external functional plan to achieve
23 compliance with RCW 36.70A.070(3) [i.e, capital facilities plan element] that compliance
24
25

26
27 ⁶⁷ County’s Response Brief at 26 (emphasis added).

28 ⁶⁸ *Fallgatter v. Sultan (Fallgatter V)*, GMHB No 06-3-0003 (Final Decision and Order, June 29, 2006).

29 ⁶⁹ *Id.* at 11.

30 ⁷⁰ *Id.* at 12.

31 ⁷¹ *Id.* at 11, 15-16.

32 ⁷² County’s Response Brief at 21-22.

⁷³ This is actually the coordinated case referenced on the Board’s website as *Campbell, et al v. San Juan County*, GMHB No. 05-2-0022c (Compliance Order - Eastsound UGA, January 30, 2009). It includes *Klein v. San Juan County*, GMHB No. 02-2-0008, and *Ludwig v. San Juan County*, GMHB No. 05-2-0019c.

1 with GMA is triggered.”⁷⁴ In defense of amending Olympic Views CSP prior to the next plan
2 update, Snohomish County and Olympic View further argue that Ronald’s “future ability to
3 provide sewer service to the Point Wells area” is uncertain⁷⁵ because Ronald “is going out
4 of business in less than one year.”⁷⁶

5 Ronald argues on reply that the Board, in *Fallgatter V*, rejected the argument that
6 external functional plans, relied upon by a jurisdiction to comply with the GMA, are not part
7 of its comprehensive plan, finding these plans are part of the connected structure of
8 comprehensive planning.⁷⁷ Shoreline argues *Ludwig* simply acknowledges that a special
9 purpose district’s plan can be relied upon by a GMA jurisdiction and, when it is relied upon,
10 there must be compliance with the GMA, including consistency, and that *Fallgatter V* does
11 not distinguish according to whether the utility’s plan was incorporated at the time.
12

13 Shoreline further argues that endorsing Respondent/Intervenors’ argument would
14 allow cities/counties to adopt “hidden” amendments outside of the GMA’s parameters so
15 long as the amendment didn’t create “actual conflict.”⁷⁸
16

17 Discussion

18
19 The Board long ago addressed the question of whether “specialized plans” or
20 external “functional” plans must be integrated with comprehensive plans. In *WSDF III*⁷⁹ the
21 Board held:

22 [T]he GMA has removed the discretion of cities and counties to undertake new
23 localized land use policy exercises disconnected from the city-wide, regional
24 policy and state-wide objectives embodied in the local comprehensive plan.”

25 Since the Board’s 1996 decision in *WSDF IV*,⁸⁰ it has been well-settled that:
26

27 ⁷⁴ County’s Response Brief at 23.

28 ⁷⁵ County’s Response Brief at 32.

29 ⁷⁶ Olympic View’s and Woodway’s Brief at 14.

30 ⁷⁷ Ronald’s Reply Brief, Section III(A).

31 ⁷⁸ Shoreline’s Reply at 5.

32 ⁷⁹ *WSDF IV* at 10

⁸⁰ *West Seattle Defense Fund v. City of Seattle (WSDF IV)*, GMHB No. 96-3-0033 (Final Decision and Order, March 24, 1997) at 28. (Emphasis omitted).

1 ...the results or conclusions of the City's capital facility needs analysis (i.e.,
2 determinations of adequacy, or identification, location, capacity and six-year
3 financing of new or expanded capital facilities) must be contained directly in
4 the comprehensive plan or incorporated CIP. ... Additionally, the Plan must
5 also cite, reference or otherwise identify and indicate the source document(s)
6 containing the required capital facility needs analysis.

7 Rejecting a city's characterization of its Water and Sewer Plan as a "management"
8 document rather than GMA planning activity, in *Fallgatter V* the Board reiterated that
9 "functional" plans must be consistent with a city's comprehensive plan:⁸¹

10 The City of Sultan's Water and Sewer Plans ... do not exist in a vacuum; they
11 are part and parcel of the City's system for accommodating and managing
12 growth under the GMA.

13 Similarly, it is apparent that Snohomish County has met the RCW 36.70A.070
14 requirements in regard to sewer and water districts by including reference to external district
15 plans as the following excerpt from the County's Capital Facilities Plan indicates:

16 The CFP supports other comprehensive plan elements and helps achieve
17 coordination and consistency among the many plans of other public agencies for
18 capital improvements within the planning area, including:

- 19 ▪ Other elements of the comprehensive plan (notably, the General Policy
20 Plan and the Transportation Element);
- 21 ▪ Plans of other local governments, especially in urban growth areas
22 (UGAs);
- 23 ▪ **Plans of special districts (i.e., schools, water, sewer);** and
- 24 ▪ Plans for capital facilities of state and regional significance.

25 This CFP draws information from the plans of many county and non-county
26 agencies that meet a variety of statutory requirements. These plans are also
27 prepared and developed over a variety of timeframes.⁸²

28 Snohomish County's 2015 Capital Facilities Plan, Section 2.3 – Public Wastewater
29 Systems, states:

30
31 ⁸¹ *Fallgatter v. Sultan (Fallgatter V)*, GMHB No. 06-3-0003 (Final Decision and Order, June 29, 2006).

32 ⁸² Core document: Snohomish County 2015 Capital Facilities Plan, at 4 (emphasis added).

1 Detailed information about projected future needs for a particular system can
2 be obtained from the comprehensive system plan for each provider.

3 **Finding of Fact:** Snohomish County incorporates by reference the approved
4 Comprehensive Sewer Plans of wastewater service providers relied upon by Snohomish
5 County to fulfill its GMA planning requirements, making them part of the Capital Facilities
6 Element of its Comprehensive Plan.
7

8 Ronald CSP

9 Snohomish County Council approved Ronald's 2010 Comprehensive Sewer Plan
10 (2010 CSP) via Motion 10-185 in April 2010, identifying Ronald as the sewer provider to the
11 Point Wells area.⁸³ Ronald's 2010 CSP includes plans to serve the urban center
12 development at Point Wells.⁸⁴ A 2015 FEIS for the BSRE's Urban Center Development and
13 the 2015 Comp Plan again identified Ronald as the sewer provider.⁸⁵ Snohomish County
14 relied upon Ronald's provision of sewer service to the Point Wells area when preparing the
15 2015 Comprehensive Plan Update and their Docket XII amendments in 2012⁸⁶ and
16 accepted Ronald's Certificate of Sewer Availability for the mixed-used residential
17 development planned for Point Wells.⁸⁷
18

19 **Finding of Fact:** Snohomish County's 2015 Comprehensive Plan relies on Ronald to
20 comply with GMA requirements to ensure adequate public wastewater facilities *for Point*
21 *Wells*.
22

23 Olympic View CSP

24 Snohomish County approved Olympic View's 2007 Comprehensive Sewer Plan
25 (Olympic's 2007 CSP) via Motion 07-550, which was subsequently amended for the first
26
27
28

29 ⁸³ Index Ex. 19.15, Motion 10-185; Shoreline's Brief at 3, 9.

30 ⁸⁴ Index Ex. 13; Shoreline's Brief at 3-4.

31 ⁸⁵ Index Ex. 19.20 at 14; Ronald's Brief at 9.

32 ⁸⁶ Index Ex. 19.20, Fig. 3.2.16; Index 21; Shoreline Brief at 4.

⁸⁷ Index Ex. 19.17; Shoreline's Brief at 4.

1 time in September 2009 via Motion 09-385.⁸⁸ Neither Olympic 2007 CSP, nor its 2009
2 amendment, identified the Point Wells area as a planned area for sewer service by Olympic
3 View. Instead, Olympic View identified Ronald as the service provider in the area.⁸⁹

4 **Finding of Fact:** In adopting its 2015 Comprehensive Plan, Snohomish County relied
5 on Olympic View's CSP to comply with GMA requirements to ensure adequate public
6 wastewater facilities in portions of Snohomish County *other than Point Wells*.
7

8 Here, the County has previously approved Olympic's CSP and relied on it to satisfy
9 its GMA obligation to ensure adequate public facilities. Amended Motion 16-135 amended
10 Olympic View's CSP. Because Olympic View's CSP is a functional plan relied upon by
11 Snohomish County to fulfill its GMA planning requirements and referenced in the County's
12 Capital Facilities Plan, the Council effectively amended the Capital Facilities Element of its
13 Comprehensive Plan in approving the CSP amendment.
14

15 Snohomish County's primary argument is that, despite adoption of Amended Motion
16 16-135, it has not formally adopted the amended version of Olympic View's CSP so it is not
17 relying on the amended portion *yet* and therefore, it doesn't matter if Olympic View's
18 updated CSP conflicts with Ronald's.⁹⁰ The problem with the County's reasoning was
19 addressed by the Board in *Fallgatter V*:

20 By **adopting Water and Sewer plans which are inconsistent with and do**
21 **not conform to the Comp Plan ... , and then proposing to amend its Comp**
22 **Plan to resolve these inconsistencies, the City has turned the GMA**
23 **process on its head.**

24 *** If Sultan's Water and Sewer Plans had been properly based on GMA-
25 adopted population targets and service areas, adoption of those ordinances
26 using the regular City public notice and hearing process...would most likely be
27 adequate to satisfy the public process procedures under the relevant statutes.
28 However, **to the extent the City relies on those plans to fulfill GMA**
29 **requirements, such as facility inventories, needs assessment, identifying**
30 **priorities and financing options, the City must adhere to the GMA's public**
31 **participation requirements. Such functional plans are intended to**
32

⁸⁸ See, Ex. A to Petition for Review, Whereas Clause 1 and 2.

⁸⁹ Index Ex. 19.14, Fig. 1.3; Shoreline Brief at 3.

⁹⁰ County's Response Brief at 27.

1 **implement GMA comprehensive plans, not amend them.** When a Water or
2 Sewer Plan is revised or updated, if it is relied upon to provide required
3 components of the Comp Plan, it is effectively a Comp Plan amendment. As
4 such, the pending and proposed amendments should be docketed for review
5 during the annually-scheduled Compo Plan amendment schedule. Changes to
6 capital facilities schedules arising from the update of functional plans could
7 also be folded into the City's annual budget review cycle. Under either option,
8 conformity, consistency and coordination among the Comp Plan and the
9 Water and Sewer Plans is maintained.

10 As was the case in *Fallgatter V*, the problem with the County's action is that: (1)
11 Snohomish does rely on both Ronald and Olympic Views CSPs to implement its
12 comprehensive plan; and (2) the two CSPs now conflict.

13 **Conclusion of Law:** Amended Motion 16-135 is a *de facto* amendment to the
14 Snohomish County Comprehensive Plan.

15 **Issue Two: Did Snohomish County, in passing Amended Motion No. 16-135, fail to**
16 **comply with RCW 36.70A.070 Preamble, RCW 36.70A.070(3), and RCW 36.70A.070(4)**
17 **because it results in an internally inconsistent comprehensive plan by having two (2)**
18 **competing, overlapping comprehensive sewer plans for the Point Wells area,**
19 **something that is prohibited by Title 57 RCW, which creates inconsistencies within**
20 **the Capital Facilities Plan and Utilities Element of the Snohomish County Plan, since**
21 **the Comprehensive Sewer Plans for Ronald and Olympic View that were previously**
22 **approved by the County are part of the County's Comprehensive Plan and the**
23 **Comprehensive Plan, including the Capital Facilities Plan, recognizes Ronald as the**
24 **provider of sewer service to Point Wells?**

25 Applicable Law

26 **RCW 36.70A.070** states that "The plan shall be an internally consistent document
27 and all elements shall be consistent with the future land use map.

28 **RCW 36.70A.070** establishes the required elements of comprehensive plans.
29 Required elements include a capital facilities plan⁹¹ and a utilities element:⁹²

30
31 ⁹¹ RCW 36.70A.070(3).

32 ⁹² RCW 36.70A.070(4).

1 Each comprehensive plan shall include a plan, scheme, or design for each of
2 the following:

3 (3) A capital facilities plan element consisting of: (a) An inventory of existing
4 capital facilities owned by public entities, showing the locations and capacities
5 of the capital facilities; (b) a forecast of the future needs for such capital
6 facilities; (c) the proposed locations and capacities of expanded or new capital
7 facilities; (d) at least a six-year plan that will finance such capital facilities ...

8 (4) A utilities element consisting of the general location, proposed location,
9 and capacity of all existing and proposed utilities, ...

10 Positions of the Parties

11 Ronald complains that Olympic View's 2016 CSP Amendment expanding Olympic
12 View's service area is inconsistent with pre-existing provisions in the County's
13 Comprehensive Plan, including the Capital Facilities Plan map showing Ronald as sewer
14 provider in Point Wells.⁹³ Snohomish County acknowledges that the Public Wastewater
15 Systems map (Figure 7) of Amended Ordinance 14-135 adopting the 2015 Capital Facilities
16 Plan identified discrete service areas for Ronald and Olympic View with Ronald identified as
17 serving the Point Wells area,⁹⁴ but states Appendix B, Figure 7 of the CFP was revised as
18 codified to replace Figure 7 with "a diagram that simply distinguished between the
19 boundaries of municipal districts and special purpose districts without individually labeling
20 each."⁹⁵ Shoreline asserts that the generic Figure 7 was never adopted and the County
21 cannot rely on it but that, even if the plan was somehow valid, taking Ronald's name off the
22 plan does not change the fact that Ronald is the recognized provider of sewer for the area,
23 something that the County does not dispute.⁹⁶ The Board agrees.
24
25
26
27

28 ⁹³ Ronald's Brief at 16-17.

29 ⁹⁴ Ronald's Reply Brief at 3; County Brief at 24; Index Ex. 47.1, Snohomish County Amended Ordinance No
30 14-135, Appendix B, Figure 7.

31 ⁹⁵ County's Response Brief at 24, fn. 2; Index Ex. 47.2, Snohomish County Amended Ordinance No 14-135,
Appendix B, Figure 7.

32 ⁹⁶ See Shoreline Request for Official Notice (November 29, 2016); Shoreline's Reply Brief at 3.

1 Discussion

2 Amended Motion 16-135 amended Olympic View's CSP to add Appendix H to reflect
3 Olympic View's provision of wastewater services within the Point Wells area.⁹⁷ The County's
4 recodification of Figure 7, lumping Ronald and Olympic View service areas together under
5 one color code *on the map* (so that the existence of overlapping service areas *in the field*
6 isn't readily apparent), in no way negates an actual conflict between the now overlapping
7 service areas. Nor does it comport with the Board's holding in *Fallgatter V* that internal
8 consistency requirements apply with equal force to functional plan amendments.⁹⁸
9

10 At the very least, such functional plans must be consistent with [the local
11 jurisdiction's] comprehensive plan.

12
13 **Finding of Fact:** Olympic View's amended CSP provides that Olympic View will plan
14 to provide sewer service to the Point Wells area.

15 **Finding of Fact:** Ronald's CSP designates Ronald as the wastewater service
16 provider for the Point Wells area and a portion of the Town of Woodway for the purpose of
17 complying with GMA requirements.⁹⁹

18 Thus, with this amendment, the County's Capital Facility Plan now incorporates two
19 functional sewer plans that identify two wastewater districts for the provision of sanitary
20 sewer within the Point Wells area.
21

22 **Finding of Fact:** Adoption of Amended Motion 16-135 amended the Olympic View
23 CSP relied upon by Snohomish County to meet its GMA comprehensive plan requirements
24 such that its service area is partially coincident with the service area designated in the
25 Ronald CSP on which the County also relies.
26

27 Distinguishing the present conflict from the appellate decision in *Chevron*, Ronald
28 observes that, in *Chevron*, the King County policy prohibiting overlapping *potential*
29 annexation areas was not binding on Woodway, and Woodway's use of the phrase did not
30

31 ⁹⁷ Index Ex. 5.

32 ⁹⁸ *Fallgatter V*, FDO at 12; Ronald's Brief at 16.

⁹⁹ See Index Ex. 19.12, Ronald's 1990 CSP, Chapter 7 pp. 2-3; Shoreline's Brief at 4.

1 carry the same policy implications as it would for a jurisdiction subject to King County
2 policies.¹⁰⁰ In contrast, here both Ronald and Olympic View are subject to the same
3 Snohomish County Comprehensive Plan. Because Olympic View's 2016 CSP Amendment
4 amended the Snohomish Comp Plan *de facto*, Snohomish County's Comprehensive plan
5 now relies on both Olympic View and Ronald to meet GMA requirements to ensure
6 adequacy of public water and sewer facilities within the County, with duplicative service
7 boundaries in portions of Woodway and the urban center development of Point Wells. The
8 resulting designation of sewer service areas in which planning to meet GMA adequacy
9 requirements is assigned to two different entities is an actual, current conflict and not merely
10 a potential, future conflict.
11

12 **Conclusion of Law:** Adoption of Amended Motion 16-135 resulted in internal
13 inconsistencies between functional sewer plans incorporated in Snohomish County's 2015
14 Capital Facilities Plan.
15

16 **Conclusion of Law:** Amended Motion 16-135 does not comply with RCW 36.70.070
17 Preamble and RCW 36.70A.070(3) and (4).
18

19 **The Board finds and concludes** that Petitioners have met their burden to prove that
20 the City's adoption of Amended Motion 16-135 does not comply with the requirement of
21 RCW 36.70A.070 that comprehensive plans be internally consistent.
22

23 **Issue Three (Part of Ronald Issue 3.2)**

24 **Does Amended Motion No. 16-135 fail to comply with the GMA's internal consistency**
25 **requirement in RCW 36.70A.070 (Preamble) and with the GMA's capital facilities**
26 **planning requirements in RCW 36.70A.070(3) because the Olympic View Amendment**
27 **is inconsistent with the Utilities Chapter of the County's General Policy Plan, which**
28 **emphasizes the need for coordination of external functional plans and requires**
29 **consistency among district utility plans and consistency between such plans and the**
30 **County's Comprehensive Plan through objectives such as Objective UT 1.B**
31 **("Achieve and maintain consistency between utility system expansion plans and**
32 **planned land use patterns") and UT Policy 1.B.2 ("The county shall maintain**
consistency between district utility plans and the county's comprehensive plan");

¹⁰⁰ Ronald's Brief at 16-17.

1 **Goal UT 3 (“Work with cities and special districts to produce coordinated wastewater**
2 **system plans for both incorporated and unincorporated areas within UGAs that are**
3 **consistent with the land use element and city plans”); and Objective UT 3.A (“Utilize**
4 **wastewater system plans as a basis for orderly development or expansion within**
5 **UGAs in accordance with the Countywide Planning Policies”)?**

6 Applicable Law

7 RCW 36.70A.070, as above.

8 **Snohomish General Plan Objective UT 1.B** - Achieve and maintain consistency
9 between utility system expansion plans and planned land use patterns.¹⁰¹

10 **Snohomish General Plan UT Policy 1.B.2** - The county shall maintain consistency
11 between district utility plans and the county's comprehensive plan.¹⁰²

12 **Snohomish General Plan Goal UT 3** - Work with cities and special districts to
13 produce coordinated wastewater system plans for both incorporated and unincorporated
14 areas within UGAs that are consistent with the land use element and city plans.¹⁰³

15 **Snohomish General Plan Objective UT 3.A** - Utilize wastewater system plans as a
16 basis for orderly development or expansion within UGAs in accordance with the Countywide
17 Planning Policies.¹⁰⁴

18 Positions of the Parties

19
20 King County observes that the Utilities Chapter of Snohomish County’s General
21 Policy Plan recognizes METRO as an “important service provider” that “provides wastewater
22 treatment for sections of south Snohomish County.”¹⁰⁵ King County echoes Ronald’s
23 argument that the stated purpose of Amended Motion 16-135, which is to provide for future
24 service to the Point Wells area by Olympic View, is inconsistent with the Utilities Chapter of
25 Snohomish County’s General Policy Plan, which emphasizes the need for consistency
26
27

28
29 ¹⁰¹ Snohomish County General Policy Plan – Utilities, p. UT-2.

30 ¹⁰² *Id.*

31 ¹⁰³ Snohomish County General Policy Plan – Utilities, p. UT-6.

32 ¹⁰⁴ *Id.*

¹⁰⁵ General Policy Plan – Utilities, p. UT-5.

1 among utility systems and the planning documents of provider agencies, as well as the
2 importance of coordinated wastewater system planning and orderly development and
3 expansion of sewers.¹⁰⁶ Thus King County argues that Amendment 2 is inconsistent with
4 Objective UT 1.B, requiring consistency between utility system expansion plans and
5 planned land use patterns, and UT Policy 1.B.2, requiring consistency between district utility
6 plans and the county's comprehensive plan.
7

8 As the Board found under Issue Three, Amended Motion 16-135 amended the
9 Olympic View CSP, on which Snohomish County relies, such that its service area is partially
10 coincident with the service area designated in the Ronald CSP, on which Snohomish
11 County also relies. The result is internal inconsistency between functional sewer plans
12 incorporated in Snohomish County's 2015 Capital Facilities Plan.
13

14 **Conclusion of Law:** Adoption of Amended Motion 16-135 creates internal
15 inconsistency between Snohomish County's 2015 Capital Facilities Plan and General Plan
16 Policy UT 1.B.2.

17 **The Board finds** King County and Petitioners have met their burden to prove that the
18 City's adoption of Amended Motion 16-135 does not comply with the requirement of RCW
19 36.70A.070 that comprehensive plans be internally consistent.
20

21 King County does not explain how Olympic View's amended CSP creates
22 inconsistency between utility expansion plans and land use patterns. A bare assertion does
23 not suffice to meet Petitioners' burden. King County further asserts that Olympic View's
24 amended CSP does not allow for coordinated wastewater system plans or the orderly
25 development of wastewater systems in the Point Wells area, as emphasized in Goal UT 3
26 and Objective UT 3.A, but does not support the assertion with legal argument.
27

28 **The Board finds** King County and Petitioners have not carried their burden to show
29 that Amended Motion 16-135 is inconsistent with Policy UT 1.B, Goal UT 3 and Objective
30 UT 3.A in violation of RCW 36.70A.070.
31

32

¹⁰⁶ King County's Brief at 6-7.

1 **Issue Four (Shoreline Issue 4; Ronald Issue 3.1)**

2 **Did Snohomish County, in passing Amended Motion No. 16-135, fail to comply with**
3 **the GMA's public participation goals and requirements, including RCW**
4 **36.70A.020(11), 36.70A.035, 36.70A.070 Preamble, 36.70A.130(2)(a), and 36.70A.140,**
5 **and failed to be guided by RCW 36.70A.020(11) by failing to appropriately notice**
6 **Amended Motion No. 16-135 as a comprehensive plan amendment and provide the**
7 **necessary public participation mandated by the GMA for comprehensive plan**
8 **amendments when the Motion amends an external functional plan upon which the**
9 **County has relied to fulfill GMA requirements?**

10 Applicable Law

11 **RCW 36.70.020(11)** requires that development and adoption of comprehensive plans
12 for counties planning under 36.70A.040 shall "[e]ncourage the involvement of citizens in the
13 planning process and ensure coordination between communities and jurisdictions to
14 reconcile conflicts."

15 **RCW 36.70A.070 Preamble** provides that "A comprehensive plan shall be adopted
16 and amended with public participation as provided in RCW 36.70A.140.

17 **RCW 36.70A.140** further requires procedures that ensure public participation:

18 Each county and city that is required or chooses to plan under RCW
19 36.70A.040 shall establish and broadly disseminate to the public a public
20 participation program identifying procedures providing for early and continuous
21 public participation in the development and amendment of comprehensive
22 land use plans and development regulations implementing such plans. The
23 procedures shall provide for broad dissemination of proposals and
24 alternatives, opportunity for written comments, public meetings after effective
25 notice, provision for open discussion, communication programs, information
26 services, and consideration of and response to public comments. ...

27 **RCW 36.70A.035** establishes notice requirement to promote public participation
28 "include notice procedures that are reasonably calculated to provide notice ... of proposed
29 amendments to comprehensive plans and development regulation."

1 **RCW 36.70A.130(2)(a)** dictates that:

2 Each county and city shall establish and broadly disseminate to the public a
3 public participation program consistent with RCW 36.70A.035 and 36.70A.140
4 that identifies procedures and schedules whereby updates, proposed
5 amendments, or revisions of the comprehensive plan are considered by the
6 governing body of the county or city ...

7 **RCW 57.16.010(7)** provides, in pertinent part:

8 Any general comprehensive plan or plans shall be adopted by resolution and
9 submitted to an engineer designated by the legislative authority of the county
10 ... and must be approved ... by the engineer and director of health... within
11 sixty days of their respective receipt of the plan. However, this sixty-day time
12 limitation may be extended by the director of health or engineer for up to an
13 additional sixty days if sufficient time is not available to review adequately the
14 general comprehensive plans.

15 ... Each general comprehensive plan shall be deemed approved if the county
16 legislative authority fails to reject or conditionally approve the plan within
17 ninety days of the plan's submission to the county legislative authority or within
18 thirty days of a hearing on the plan when the hearing is held within ninety days
19 of submission to the county legislative authority. However, a county legislative
20 authority may extend this ninety-day time limitation by up to an additional
21 ninety days where a finding is made that ninety days is insufficient to review
22 adequately the general comprehensive plan. In addition, the commissioners
23 and the county legislative authority may mutually agree to an extension of the
24 deadlines in this section.

25 Positions of the Parties

26 Shoreline complains that the Record for the public notice on the adoption of Motion
27 No. 16-135 simply states it is approving a comprehensive sewer plan as required by RCW
28 57.16 but gave no notice of the impact of the amendment or of any intent to amend
29 Snohomish County's Comprehensive Plan.¹⁰⁷ It asserts that the Record is devoid of any
30 action before the Planning Commission and fails to inform interested parties of the nature of
31

32 ¹⁰⁷ Shoreline's Brief at 4-6.

1 the pending change, let alone assist parties in understanding the impact or reach of the
2 amendment regarding sanitary sewer within the Point Wells area.¹⁰⁸

3 Snohomish replies that RCW 57.16.010(7) required the County to review and act on
4 Olympic View's proposed amendment within ninety days of its submission.¹⁰⁹ Further,
5 Snohomish asserts that it held a public hearing and points to Exhibits 9-13, 15-18, and 19.1-
6 19.29 as evidence of participation of the parties.¹¹⁰

8 Discussion

9
10 As Petitioners point out,¹¹¹ the Board has examined the public participation
11 requirements of the GMA on many occasions. In *Weyerhaeuser*,¹¹² it held that effective public
12 participation requires "adequate and effective notice" of a proposed action by the
13 government. To be adequate and effective, RCW 36.70A.035 requires that notice be
14 reasonably calculated to apprise interested parties of the general nature and magnitude of
15 the action.¹¹³ To be sufficient, council agendas must describe the nature of the proposed
16 changes so that potentially interested members of the public can ascertain the reach and
17 impact (adding, deleting, changing, etc.) of the proposed action.¹¹⁴

18
19 The pivotal issue here is that approving Olympic View's CSP amendment was a *de*
20 *facto* Comp Plan amendment.¹¹⁵ Again, the Board's comments in *Fallgatter V*¹¹⁶ are
21 instructive:

22 If Sultan's Water and Sewer Plans had been properly based on GMA-adopted
23 population targets and service areas, adoption of those ordinances using the
24

25 ¹⁰⁸ See, e.g. Index 1, 3, 14, 31, 33.

26 ¹⁰⁹ County's Response Brief at 15.

27 ¹¹⁰ *Id.*

28 ¹¹¹ Shoreline's Brief at 14-15.

29 ¹¹² *Weyerhaeuser Company, et al v. Thurston County*, GMHB No. 10-2-0020c (Final Decision and Order, June
30 17, 2011) at 10.

31 ¹¹³ See also *Pirie v. City of Lynnwood*, GMHB No. 06-3-0029 (Final Decision and Order, April 9, 2007) at 16.

32 ¹¹⁴ *Orton Farms v. Pierce County*, GMHB No. 04-3-0007c (Final Decision and Order, August 2, 2004) at 13
(citing *Homebuilders Assoc. of King County v. City of Bainbridge Island*, GMHB No. 00-3-0014 (FDO, Feb. 26,
2001) at 10-11.

¹¹⁵ Shoreline's Reply at 2-3.

¹¹⁶ *Fallgatter V* at 16-17.

1 regular City public notice and hearing process [augmented by applicable state
2 agency requirements, if any] would most likely be adequate to satisfy the
3 public process procedures under the relevant statutes. However, to the extent
4 the City relies on those plans to fulfill GMA requirements, such as facility
5 inventories, needs assessment, identifying priorities and financing options, the
6 City must adhere to the GMA's public participation requirements. Such
7 functional plans are intended to implement GMA comp plans, not amend them.
8 When a Water or Sewer Plan is revised or updated, if it is relied upon to
9 provide required components of the Comp Plan, it is effectively a Comp Plan
10 amendment. As such, the pending and proposed amendments should be
11 docketed for review during the annually-scheduled Comp Plan amendment
12 schedule. Changes to capital facilities schedules arising from the update of
functional plans could also be folded into the City's annual budget review
cycle. Under either option, conformity, consistency and coordination among
the Comp Plan and the Water and Sewer Plans is maintained.

13 Snohomish County relies on Olympic View's CSP to comply with GMA planning
14 mandates, and therefore it was required to comply with the GMA public participation
15 requirements. It did not. Although the County points to commentary in the Record as
16 evidence of public participation, it does not dispute that the public participation process fell
17 short of the requirements of the GMA. All of the documents were submitted by counsel or
18 employees of the parties to this case. There is no evidence of the "broad dissemination of
19 proposals and alternatives, opportunity for written comments, public meetings after effective
20 notice, provision for open discussion, communication programs, information services, and
21 consideration of and response to public comments" required by RCW 36.70A.140.
22

23 The Board also notes that RCW 5716.010(7) allows the County legislative authority
24 to unilaterally extend its deadline to act on Olympic View's request to up to 180 days and,
25 with the agreement of Olympic View, the deadline could be extended further.¹¹⁷ It would
26 seem that extending the deadlines to allow for a GMA public process was possible.
27

28 **The Board finds** that Snohomish County's adoption of Amended Motion 16-135 was
29 not guided by the public participation goal of RCW 36.70A.020(11) and did not comply with
30

31 _____
32 ¹¹⁷ RCW 57.16.010(7).

1 the GMA public process requirements of RCW 36.70A.070 Preamble, RCW 36.70A.140,
2 RCW 36.70A.035.

3
4 **Issue Five (Shoreline Issue 5; Ronald Issue 3.3)**

5 **Did Snohomish County, in passing Amended Motion No. 165, fail to comply with RCW**
6 **36.70A.130(2)(a) because its action will result in amendments to the Snohomish**
7 **County Comprehensive Plan more frequently than once a year?**

8 Applicable Law

9 **RCW 36.70A.130(2)** provides that “updates, proposed amendments or revisions of
10 the comprehensive plan are considered by the governing body of the county or city no more
11 frequently than once every year.”

12 **RCW 36.70A.130(2)(b)** explains that “all proposals shall be considered by the
13 governing body concurrently so the cumulative effect of the various proposals can be
14 ascertained.”¹¹⁸

15
16 Positions of the Parties

17
18 Shoreline asserts that, because Amended Motion 16-135 *de facto* amended the
19 County Comprehensive Plan, the actions taken by Snohomish County in approving Olympic
20 View’s CSP amendment were contrary to the GMA’s mandates for comprehensive plan
21 amendments.¹¹⁹ That is, the proposed adoption of the amendment was not docketed with
22 the County’s other comprehensive plan amendments for 2016.¹²⁰ Amended Motion 16-135
23 amended the comprehensive plan on June 1, 2016 and the Council acted on the remainder
24 of the docketed comprehensive plan amendments on October 12, 2016.

25
26
27 ¹¹⁸ RCW 36.70A.130 provides six exceptions, none of which are applicable here – initial adoption of a subarea
28 plan; development of an initial subarea plan for economic development outside of a hundred year floodplain;
29 adoption or amendment to a shoreline master program; amendment of a capital facilities element that occurs
30 concurrently with the adoption or amendment of a budget; adoption of amendments necessary to enact a
planned action under SEPA; and amendments that address an emergency or resolve an appeal filed with the
Board or Court.

31 ¹¹⁹ Shoreline’s Brief at 16-17.

32 ¹²⁰ The Board takes official notice of Snohomish County Ordinances 16-064, 16-065, 16-066, 16-067, 16-068,
16-076, 16-077, and 16-078, which reflect the 2016 Comprehensive Plan Docket.

1 Snohomish and Olympic View rest on their assertion that Amended Motion 16-135
2 did not amend the comprehensive plan.

3
4 Discussion

5 Shoreline acknowledges that Amended Motion 16-135 was adopted prior to the
6 regularly docketed comprehensive plan amendments, but argues its adoption made
7 “inevitable” the County’s violation of the annual amendment limitation. To hold otherwise
8 would “exalt form over substance.” The Board agrees.

9
10 Amended Motion 16-135 was a *de facto* amendment to the County’s Comprehensive
11 Plan adopted outside of the annual amendment process required in RCW 36.70A.130(2).
12 As such, its adoption violated the requirement that “all proposals shall be considered by the
13 governing body concurrently so *the cumulative effect of the various proposals can be*
14 *ascertained.*”¹²¹

15 **The Board finds** that Amended Motion 16-135 did not comply with the mandate of
16 RCW 36.70A.130(2) that comprehensive plan amendments be considered concurrently and
17 not more often than once per year.

18
19 Conclusion

20
21 The Board is convinced that a mistake has been made. In view of the record before
22 the Board and in light of the goals and requirements of the GMA, Snohomish County’s
23 action in adopting Motion 16-135 is clearly erroneous.

- 24
 - 25 • Amended Motion 16-135 is a *de facto* amendment to the Snohomish County
 - 26 Comprehensive Plan.
 - 27 • Adoption of Amended Motion 16-135 creates an internal inconsistency
 - 28 between functional sewer plans incorporated in Snohomish County’s 2015
 - 29 Capital Facilities Plan.

30
31
32

¹²¹ RCW 36.70A.130(2)(b) (*Italics added*).

- Adoption of Amended Motion 16-135 creates internal inconsistency between Snohomish County's 2015 Capital Facilities Plan and General Plan Policy UT 1.B.2.
- Adoption of Amended Motion 16-135 does not comply with the requirement of RCW 36.70A.070 that comprehensive plans be internally consistent.
- Adoption of Amended Motion 16-135 did not comply with the mandate of RCW 36.780A.130(2) that comprehensive plan amendments be considered concurrently and not more often than once per year.
- Snohomish County's adoption of Amended Motion 16-135 was not guided by the public participation goal of RCW 36.70A.020(11) and did not comply with the GMA public process requirements of RCW 36.70A.070 Preamble, RCW 36.70A.140, RCW 36.70A.035, or the concurrent annual amendment requirements of RCW 36.70A.130(2).

VI. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, the GMA, prior Board orders and case law, having considered the arguments of the parties, and having deliberated on the matter, the Board Orders:

- Amended Motion 16-135 is remanded to Snohomish County for action to bring it into compliance with the goal of RCW 36.70A.020(11) and the requirements of RCW 36.70A.070 (Preamble), RCW 36.70A.070(3) and (4), RCW 36.70A.140, and RCW 36.70A.035.

Item	Date Due
Compliance Due	July 26, 2017 ¹²²
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	August 9, 2017

¹²² Respondent may request an extension if necessary to comply with a public participation process.

1	Objections to a Finding of Compliance	August 23, 2017
2	Response to Objections	August 30, 2017
3	Telephonic Compliance Hearing	September 12, 2017
4	1 (800) 704-9804 and use pin code 4472777#	10:00 am

5
6 **Compliance Report/Statement of Actions Taken to Comply shall be limited to**
7 **25 pages, 35 pages for Objections to Finding of Compliance, and 10 pages for the**
8 **Response to Objections.**

9
10 SO ORDERED this 25th day of January, 2017.

11
12 _____
13 Cheryl Pflug, Board Member

14
15 _____
16 Deb Eddy, Board Member

17 I concur in the results of the Board's decision, including the determination that the County's
18 approval of Amended Motion No. 16-135 constituted a *de facto* comprehensive plan
19 amendment.

20
21 _____
22 William Roehl, Board Member

23
24 **Note: This is a final decision and order of the Growth Management Hearings Board**
25 **issued pursuant to RCW 36.70A.300.¹²³**

26
27 _____
28 ¹²³ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all
29 parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840.
30 A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days
31 as provided in RCW 34.05.514 or 36.01.050. The petition for review of a final decision of the board shall be
32 served on the board but it is not necessary to name the board as a party. See RCW 36.70A.300(5) and WAC
242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the
Growth Management Hearings Board is not authorized to provide legal advice.

Appendix A: Procedural matters

On July 29, 2016, City of Shoreline and Ronald Wastewater District filed separate Petitions for Review. The City of Shoreline's petition was assigned Case No. 16-3-0003. Ronald Wastewater District's petition was assigned Case No. 16-3-0004. Ronald amended its Petition for Review on August 2, 2015. The cases were consolidated as 16-3-0004c.¹²⁴

A prehearing conference was held telephonically on August 24, 2016. Petitioner City of Shoreline appeared through its attorney Julie Ainsworth-Taylor. Petitioner Ronald Wastewater District (Ronald Wastewater) appeared through its attorney Duncan Greene. Respondent Snohomish County appeared through its attorneys Brian Dorsey and Jessica Kraft-Klehm. King County appeared through its attorney Verna Bromley. Olympic View Water and Sewer District appeared through its attorney, Thomas Fitzpatrick. Intervention was granted to King County and Olympic View Water and Sewer District.¹²⁵ Town of Woodway was granted intervention on September 9, 2016.¹²⁶

The Briefs and exhibits of the parties were timely filed and are referenced in this order as follows:

- Petitioner Ronald Wastewater District's Prehearing Brief, October 24, 2016 (Ronald's Brief);
- City of Shoreline's Prehearing Brief, October 24, 2016 (Shoreline's Brief);
- Intervenor King County's Prehearing Brief, October 24, 2016 (King County's Brief);
- Respondent Snohomish County's Prehearing Brief, November 14, 2016 (County's Response Brief);
- Intervenors Olympic View Water and Sewer District and Town of Woodway's Prehearing Brief (Olympic View's and Woodway's Brief);

¹²⁴ Order of Consolidation and Notice of Hearing and Preliminary Schedule (August 3, 2016).

¹²⁵ Prehearing Order and Order on Intervention (August 29, 2016).

¹²⁶ Order Granting Intervention to Town of Woodway.

- Petitioner Ronald Wastewater District's Prehearing Reply Brief, November 29, 2016 (Ronald's Reply Brief);
- City of Shoreline's Reply Brief, November 29, 2016 (Shoreline's Reply Brief);
- City of Shorelines's Request for Official Notice, November 29, 2016.
- Intervenor King County's Joinder in Petitioners Ronald Wastewater District's and City of Shoreline's Prehearing Reply Briefs, November 29, 2016.

Hearing on the Merits

The hearing on the merits was held on December 13, 2016, at the Olympic View Water and Sewer District in Edmonds, Washington. Cheryl Pflug convened the hearing as presiding officer. Also present was Board member Deb Eddy. Board member William Roehl attended telephonically. The City of Shoreline was represented by Julie Ainsworth-Taylor and Margaret King. Duncan Green appeared on behalf of Petitioner Ronald. Verna Bromley appeared for King County. Snohomish County was represented by Brian Dorsey and Jessica Kraft-Klem. Tom Fitzpatrick appeared on behalf of Intervenor Olympic View and Megan Fraser Represented Intervenor Town of Woodway.

The hearing afforded each party the opportunity to emphasize the most important facts and arguments relevant to its case. Board members asked questions seeking to thoroughly understand the history of the proceedings, the important facts in the case, and the legal arguments of the parties.

Official Notice

WAC 242-03-630 authorizes the Board to take official notice of matters of law:

(4) Counties and cities. Ordinances, resolutions, and motions enacted by cities, counties, or other municipal subdivisions of the state of Washington, including adopted plans, adopted regulations, and administrative decisions.

Accordingly, the presiding officer ruled orally at the hearing on the merits that Shoreline's November 29, 2016, Request for Official Notice of Code Provisions, the amended

1 Ordinance and Amendments Sheet 30, and Snohomish County Charter Section 2.130 was
2 **granted.**
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